

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**DAVID MCCHESNEY,**

**Plaintiff,**

**v.**

**9:08-CV-163  
(FJS/DEP)**

**MICHAEL HOGAN, Ph.D.; DONALD  
SAWYER, Ph.D.; JEFFREY AMIDON, M.D.;  
BARBARA STAPHOLZ, R.N.; MAUREEN  
ADAMS, R.N.; EDWIN GWYTHYER;  
CHRISTOPHER MEYER; CHARMAINE BILL,  
R.N.; SAM LILLY, R.N.; TERRY  
MAXYMILLIAN; JEFFREY NOWICKI;  
MARY BULLIVANT, R.N.; and T.A. POTTER,  
Individually and in their Official Capacities,**

**Defendants.**

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**APPEARANCES**

**OF COUNSEL**

**DAVID MCCHESNEY  
#25527**

CNY Psychiatric Center  
P.O. Box 300  
Marcy, New York 13403-0300  
Plaintiff *pro se*

**OFFICE OF THE NEW YORK  
STATE ATTORNEY GENERAL**  
The Capitol  
Albany, New York 12224-0341  
Attorneys for Defendants

**ADELE TAYLOR-SCOTT, AAG**

**SCULLIN, Senior Judge**

**ORDER**

Plaintiff commenced this action on February 11, 2008; and, at the Court's direction, filed an amended complaint on May 23, 2008. *See* Dkt. Nos. 1, 3, 4, 5. At the close of discovery, all

of the Defendants, except Edwin Gwyther, who has neither been served nor appeared in this action, moved for summary judgment dismissing Plaintiff's claims on several grounds. *See* Dkt. No. 46. Plaintiff did not file any papers in opposition to Defendants' motion. In a Report and Recommendation dated August 17, 2010, Magistrate Judge Peebles recommended that this Court grant Defendants' motion for summary judgment and dismiss the complaint in all respects and that this Court dismiss *sua sponte* and without prejudice Plaintiff's claims against Defendant Gwyther. *See* Dkt. No. 48 at 48. Plaintiff did not file any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, \*10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Peebles' August 17, 2010 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

**ORDERS** that Magistrate Judge Peebles' August 17, 2010 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

**ORDERS** that Defendants' motion for summary judgment is **GRANTED** in its entirety and Plaintiff's complaint is **DISMISSED** in all respects; and the Court further

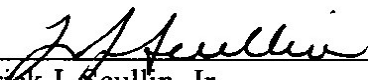
**ORDERS** that Plaintiff's claims against Defendant Gwyther, who has neither been served nor appeared in this action, are **DISMISSED sua sponte WITHOUT PREJUDICE**; and the Court further

**ORDERS** that the Clerk of the Court shall enter judgment in favor of Defendants and close this case; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: September 7, 2010  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge